Office Supreme Court, U.S.
FILED
APR 1964
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 821
Criminal

MARVIN L. KRINE, *Petitioner*

v.

STATE OF MINNESOTA, *Respondent*

PETITION FOR REHEARING OF PETITION FOR CERTIORARI

HARRY H. PETERSON
Attorney for Petitioner
720 Soo Line Building
Minneapolis, Minnesota

ALBERT E. JENNER, JR.
135 So. LaSalle Street
Chicago 3, Illinois

CApital 2-2703 — Review Publishing Co., 141 E. 5th St., St. Paul 1, Minn. — CApital 2-2701

AUTHORITIES CITED

	PAGE
Williams v. North Carolina, 317 U.S. 287, 63 S. Ct. 207, 87 L. Ed. 189	1,3
Stromberg v. California, 282 U.S. 259, 51 S. Ct. 532, 75 L. Ed. 1117, 73 A.L.R. 1484	1
Cramer v. U.S., 325 U.S. 1, 65 S. Ct. 918, 89 L. Ed. 1441	1

IN THE

Supreme Court of the United States

OCTOBER TERM, 1963

No. 821
(Criminal)

MARVIN L. KLINE, *Petitioner*,

v.

STATE OF MINNESOTA, *Respondent*.

PETITION FOR REHEARING OF PETITION FOR CERTIORARI

Now comes the petitioner above named and petitions the court for a rehearing of his petition for a writ of certiorari.

The petition herein sets forth a clear case for the granting of certiorari under the rules laid down in the cases cited at page 25 of the Petition, viz:

Williams v. North Carolina, 317 U.S. 287, 63 S. Ct. 207, 87 L. Ed. 189

Stromberg v. California, 283 U.S. 359, 51 S. Ct. 532, 75 L. Ed. 1117, 73 A.L.R. 1484

Cramer v. U.S., 325 U.S. 1, 65 S. Ct. 918, 89 L. Ed. 1441

The question raised by the Petition was whether the decision of the Supreme Court of Minnesota sustaining the conviction of petitioner of a charge of grand larceny in the first

degree denied to petitioner, due process of law in violation of the Due Process Clause of the Fourteenth Amendment to the Constitution of the United States in that the trial court instructed the jury that it might find that the defendant was guilty of the crime charged if the defendant obtained from Onan, a document authorizing an increase of petitioner's salary by means of fraud, trickery or deceit when, as a matter of law, there was no evidence whatever to sustain an affirmative finding that petitioner had obtained the document by means of fraud, trickery or deceit.

The instruction of the trial judge is found on page 10 of the Petition. The evidence relative to the so-called fraud, trickery and deceit, or rather, the complete absence of any such evidence, is set forth in detail at pages 6-9 of the Petition. This evidence shows that there not only was no fraud, trickery and deceit practiced upon Onan, who executed the document in question, but also that the facts and circumstances of the case absolutely precluded as a matter of law such fraud, trickery and deceit.

The respondent was unable to point to any evidence whatever to sustain an affirmative finding as to fraud, trickery and deceit. On the contrary, the respondent stated that an affirmative finding as to such facts could be made by other evidence which does not even relate to fraud, trickery and deceit. Respondent's statement thereof is as follows (Respondent's Brief, p. 17):

> "The portion of record cited by petitioner is opposed to other testimony by Onan that he was not aware that he had authority to grant petitioner a salary increase (R. 358); that he would not have exercised such authority alone had it been granted, (R. 360); that he had no recollection of ever having signed the letter purporting to authorize the salary raise; that if he had read the letter, he would have remembered it. (R. 358-361)."

Also on page 17, respondent states that the Supreme Court of Minnesota based its affirmative finding on the evidence to which the respondent referred. Respondent states (Respondent's Brief, p. 17):

> "On appeal below, the Minnesota Supreme Court, reviewing the record as a whole, determined that there was ample evidence to support the jury's conclusion either that Oman had no authority to order a salary increase and that petitioner, knowing this * * * represented otherwise; or that if Oman's authority in fact existed, or petitioner believed it did, he secured Oman's signature by fraud or deceit.'".

Thus we have a situation where it is undisputed that the jury was authorized by the trial court to find the defendant guilty of obtaining the signature of Mr. Oman by fraud, trickery and deceit, without any evidence whatever to support such a finding; and the Supreme Court of Minnesota on appeal sustained said finding.

This court in commenting on a precisely similar situation in *Williams v. North Carolina*, cited in Petitioner's Brief at page 25 (317 U.S. 287, 63 S. Ct. 207, 87 L. Ed. 279), said (317 U.S. 292):

> "To say that a general verdict of guilty should be upheld though we cannot know that it did not rest on the invalid constitutional ground on which the case was submitted to the jury, would be to countenance a procedure which would cause a serious impairment of constitutional rights."

A correct decision in this case is of paramount importance in any view of the case. To begin with, the decision below denies to the petitioner his constitutional rights. The conviction which probably was based upon such denial resulted

in a sentence of 0–10 years' imprisonment of the petitioner. On the retrial petitioner has every reason to believe that he will be acquitted. As pointed out in our petition, the state charged the defendant with having committed the crime by means of a forged signature of Mr. Onan on the document by which the salary increase was obtained and, if there was no forgery, by obtaining the signature by means of fraud, trickery and deceit. At the trial and on the appeal to the State Court the state was compelled to abandon the claim of forgery for lack of any evidence to sustain an affirmative finding of such fact. There is an equal lack of any evidence to support a finding of fraud, trickery or deceit as conclusively appears here. Petitioner's imprisonment under the sentence would be one based on a denial of due process of law. Therefore, this court should grant a rehearing of the Petition and upon such rehearing grant the writ upon the merits in order that the petitioner may obtain his constitutional right to due process of law in the court of Minnesota.

Respectfully submitted,

HARRY H. PETERSON
Attorney for Petitioner
720 Soo Line Building
Minneapolis, Minnesota.

ALBERT E. JENNER, JR.
135 So. LaSalle Street
Chicago 3, Illinois